A

CELCOM (MALAYSIA) BHD & ANOR v. TAN SRI DATO' TAJUDIN RAMLI & ORS AND ANOTHER CASE (NO 2)

HIGH COURT MALAYA, KUALA LUMPUR
WONG KIAN KHEONG J
[SUIT NOS: D5-22-610-2006 & D1-22-1960-2008]
B 18 FEBRUARY 2022

Abstract – *This judgment, which pertained to an unlawful and doctored video clip of an online court trial, was written in the public interest regarding the due administration of justice for members of the public, in particular practising advocates and solicitors, to be aware of the following adverse consequences in respect of the making and distribution of the doctored video clip: (i) contempt of court; (ii) possible commission of offences under ss. 233(1)(a)(i) and 233(1)(a)(ii) of the Communications and Multimedia Act 1998; (iii) defamation of the advocate and solicitor under tort and criminal law (s. 499 of the Penal Code); and (iv) any advocate and solicitor and/or pupil who is involved in the making and/or distribution of the doctored video clip may have committed a disciplinary offence under s. 94(3) of the Legal Profession Act 1976 and may be liable for disciplinary sanction by the Disciplinary Board.*

C

D

E

CYBER LAW: *Improper use of network facilities – Doctored video clip of online trial – Trial conducted via Zoom hearing – Audio-visual testimony of court's record of Zoom hearing doctored – Making false 'communication' and transmitting – Doctored video clip depicted trial judge and court in unsavoury light and defamatory of advocate and solicitor – Communications and Multimedia Act 1998, ss. 233(1)(a)(i) & 233(1)(a)(ii)*

F

CIVIL PROCEDURE: *Contempt – Contempt of court – Doctored video clip of online trial – Trial conducted via Zoom hearing – Audio-visual testimony of court's record of Zoom hearing doctored – Whether act aimed at scandalising court – Whether calculated to bring court or judge into contempt or lower judge's authority – Whether depicted court as having unjustly dealt with advocate and solicitor*

G

TORT: *Defamation – Video clip – Doctored video clip of online court trial – Trial conducted via Zoom hearing – Audio-visual testimony of court's record of Zoom hearing doctored – Doctored video clip depicted trial judge and court in unsavoury light and defamatory of advocate and solicitor – Penal Code, s. 499*

H

One Mr Ach was scheduled to give evidence in Germany, through zoom hearing, in a joint trial where German individuals and a German company ('German entities') were sued. Before Mr Ach entered the 'witness room', counsel representing the German entities, Mr Lim Tuck Sun ('Mr Lim TS'), informed the court that Mr Ach's younger sister had just passed away

I

('Mr Ach's bereavement') and he needed to rush to his sister's residence. Counsel involved in the joint trial, Mr Rabindra, Mr Lim Kian Leong ('Mr Lim KL') and Mr Lambert, assured the court that they would keep their cross-examination as brief as possible ('counsel's assurance'). Mr Ach then entered the witness room and joined the Zoom hearing. After expressing His Lordship's condolences, the trial judge informed Mr Ach that the court was minded to adjourn the Zoom hearing due to Mr Ach's bereavement, but Mr Ach pleaded to proceed. As such, the Zoom hearing proceeded and during the said hearing, the following, *inter alia*, took place: (i) Mr Lim TS made several objections that prolonged Mr Ach's cross-examination and certain provocative statements; (ii) the trial judge made rulings pertaining to Mr Lim TS' objections and statements; and (iii) the trial judge expressed notice to Mr Lim TS that His Lordship would consider lodging a complaint against Mr Lim TS, with the Disciplinary Board ('DB') regarding his statements and conduct in court. Despite the above, the trial judge decided not to lodge a complaint with the DB. A few months later, the plaintiffs and the German entities reached a confidential out-of-court settlement and the two suits against the German entities were discontinued ('discontinuance order'). However, a 40-second audio-visual recording of Mr Ach's testimony ('video clip') later emerged showing, *inter alia*: (i) four frames of Mr Rabindra, Mr Ach and Mr Lim KL and the trial judge ('four frames'); (ii) in view of Mr Ach's bereavement, the trial judge asked Mr Lim KL, in a loud voice, *inter alia*, not to ask questions on contractual interpretation; (iii) the trial judge asked Mr Lim KL whether His Lordship had made himself clear and Mr Lim KL answered in the affirmative; and (iv) the trial judge asked the court interpreter to record the time of the above matter so that a complaint against Mr Lim KL could be lodged with the DB.

Obiter dictum:

(1) This judgment put on record what actually transpired regarding Mr Ach's testimony, in particular the involvement of Mr Lim KL and Mr Lim TS. The video clip had been doctored as the following: (i) the court's zoom record and notes of proceedings, which had been agreed by all parties, stated that the trial judge had asked Mr Lim TS (not Mr Lim KL) whether Mr Lim TS understood the question not to delay Mr Ach's evidence in view of Mr Ach's bereavement; and (ii) in addition to the four frames, the court's Zoom record would also have the frames of Mr Lim TS, Mr Lambert, certain parties representatives (the camera recording of parties and parties' representatives were switched off upon the court's direction) while Mr Lim TS' frame was deliberately omitted from the video clip. (paras 32 & 50)

(2) The making and transmission of the doctored video clip amounted to an act which scandalised the court and was calculated to bring the court or the trial judge into contempt or to lower His Lordship's authority. Without knowledge of, *inter alia*, (i) Mr Ach's bereavement; (ii) Mr Lim

TS' objections and statements; (iii) the court's rulings; (iv) the court's express notice to Mr Lim TS that the court would consider lodging a complaint with the DC regarding his statements and conduct in court; (iv) the discontinuance order; and (v) the court's decision not to lodge a complaint with the DB against Mr Lim TS, any reasonable person who has only watched the doctored video clip would form the view, opinion and/or belief that the court had unjustly dealt with Mr Lim KL by complaining to the DB about him merely because he had asked Mr Ach regarding the interpretation of a contractual provision. (para 37)

(3) The doctored video clip had defamed Mr Lim KL's by 'visible representations' which was made and/or transmitted with the knowledge or reasons to believe that the imputation concerning Mr Lim KL's in the video clip would harm Mr Lim KL's reputation. An offence of criminal defamation is punishable under s. 500 of the Penal Code with imprisonment of up to two years and/or with a fine. Mr Lim KL had the right to file a civil suit for defamation against the maker and/or transmitter of the video clip. (paras 43 & 44)

(4) The making of the doctored video clip constituted an offence under s. 233(1)(a)(i) of the Communications and Multimedia Act 1998 ('CMA') for the following reasons: (i) the contents of the video clip fell within the wide definition of 'content' in s. 6 of the CMA; (ii) the transmission of the video clip constituted a 'communication' in s. 233(1)(a) of the CMA, as understood in the definition of 'communications' in s. 6 of the CMA; (iii) the transmission of the video clip, through WhatsApp or any other electronic means constituted a 'communication' of the video clip through an 'application service' as defined in s. 6 of the CMA; (iv) the contents of the video clip were false'; and (v) the making of the false video clip could only have been made with the intention to annoy Mr Lim KL and/or the trial judge. Any person who knowingly transmits the false video clip commits an offence under s. 233(1)(a)(ii) of the CMA. (paras 39 & 40)

(5) Any advocate and solicitor and/or pupil who is involved in the making and/or distribution of the doctored video clip may have committed a disciplinary offence under s. 94(3) of the Legal Profession Act 1976 and may be liable for disciplinary sanction by the DB. (para 46)

Case(s) referred to:

Ambard v. AG for Trinidad & Tobago [1936] 1 All ER 704 ***(refd)***
NVJ Menon v. The Great Eastern Life Assurance Company Ltd [2004] 3 CLJ 96 CA ***(refd)***
Peguam Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor [2021] 3 CLJ 603 FC ***(refd)***
R v. Gray [1900] 2 QB 36 ***(refd)***
TO Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 LNS 126 FC ***(refd)***
Wong Swee Chin v. PP [1980] 1 LNS 138 FC ***(refd)***

Legislation referred to:
Communications and Multimedia Act 1998, ss. 6, 233(1)(a)(i), (ii), (3)
Courts of Judicature Act 1964, s. 3
Evidence Act 1950, ss. 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 138(3), 146(a)
Legal Profession Act 1976, ss. 94(3)(o), (5), 99(2)
Penal Code, ss. 499, 500
Rules of Court 2012, O. 35 r. 3

(Suit No: D5-22-610-2006)
For the plaintiffs - Rabindra S Nathan, Nad Segaram & Chow Xing Hui; M/s Shearn Delamore & Co
For 1st & 2nd defendants - Lim Kian Leong & Tobias Lim Koon Li; M/s Lim Kian Leong & Co
For 4th, 5th & 7th to 9th defendants - Christopher Leong Sau Foo, Lim Tuck Sun, Nirvan Gopalan-Krishnan & Anneliz Reina George; M/s Chooi & Co + Cheang & Ariff
For the TMB (counterclaim) - Lambert Rasa-Ratnam & Chan Mun Yew; M/s Lee Hishammuddin Allen Gledhill

(Suit No: D1-22-1960-2008)
For the plaintiffs - Rabindra S Nathan, Nad Segaram & Chow Xing Hui; M/s Shearn Delamore & Co
For the 1st & 2nd defendants - Lim Kian Leong & Tobias Lim Koon Li; M/s Lim Kian Leong & Co
For the 4th to 6th defendants - Christopher Leong Sau Foo, Lim Tuck Sun, Nirvan Gopalan-Krishnan & Anneliz Reina George; M/s Chooi & Co + Cheang & Ariff
For the TMB (counterclaim) - Lambert Rasa-Ratnam & Chan Mun Yew; M/s Lee Hishammuddin Allen Gledhill

Reported by Najib Tamby

JUDGMENT

Wong Kian Kheong J:

Introduction

[1] In the joint trial of the above two cases (trial), Mr Thomas Martin Ach (Mr Ach) gave evidence on 27 September 2021 in Munich, Germany through "remote communication technology" (as defined in s. 3 of the Courts of Judicature Act 1964). Our courts use the "Zoom video conferencing" for online court proceedings (Zoom hearing).

[2] This judgment concerns an unlawful 40-second audio-visual recording of Mr Ach's testimony (video clip) made by unknown person(s) from the court's record of the Zoom hearing (court's Zoom record).

[3] This judgment is written because the video clip has been doctored and a senior advocate and solicitor (A&S), Mr Lim Kian Leong, has been defamed as a result. More importantly, it is in the public interest regarding

the due administration of justice for members of the public, in particular practising A&S, to be aware of the following adverse consequences in respect of the making and distribution of the doctored video clip:

(i) contempt of court has been committed regarding the doctored video clip;

(ii) the possible commission of an offence under s. 233(1)(a)(i) of the Communications and Multimedia Act 1998 (CMA) of knowingly making a false "communication" in the form of the doctored video clip;

(iii) when a person knowingly transmits the doctored video clip, an offence pursuant to s. 233(1)(a)(ii) of the CMA may have been committed;

(iv) criminal defamation of Mr Lim Kian Leong under s. 499 of the Penal Code (PC) has been committed;

(v) with regard to the doctored video clip, Mr Lim Kian Leong may institute a civil suit for tort of defamation; and

(vi) any A&S and/or pupil who is involved in the making and/or distribution of the doctored video clip may have committed a disciplinary offence under s. 94(3)(o) of the Legal Profession Act 1976 (LPA) and may be liable for disciplinary sanction by disciplinary board (DB).

Background

[4] In Civil Suit No. D5-22-610-2006 (first suit), the plaintiff companies (plaintiffs) claimed, among others, that nine individual defendants in the first suit had breached their fiduciary and statutory duties as directors of the plaintiffs regarding, among others, certain contracts and transactions entered into by the plaintiffs.

[5] The plaintiffs alleged in Civil Suit No. D1-22-1960-2008 (second suit) that the seven defendants in the second suit had conspired, either by lawful or unlawful means, to injure the plaintiffs and had thereby caused loss to the plaintiffs.

[6] Tan Sri Dato' Tajudin bin Ramli (first defendant) and Dato' Bistamam bin Ramli (second defendant) are the first and second defendants in the first and second suits ("two suits"). The first and second defendants have filed two counterclaims in the two suits against the plaintiffs and Telekom Malaysia Bhd (TMB).

[7] The following German individuals and a German company (collectively referred to in this judgment as the "German entities") have been sued in the two suits:

(i) the fourth to ninth defendants in the first suit. Sadly, the sixth defendant has passed on; and

(ii) the fourth to sixth defendants in the second suit.

[8] The following learned lead counsel appeared before me:

(i) Mr Rabindra Nathan (Mr Rabindra) acts for the plaintiffs;

(ii) Mr Lim Kian Leong appears for the first and second defendants;

(iii) the learned lead counsel for the German entities is Mr Christopher Leong Sau Foo (Mr Leong). Mr Leong is assisted by Mr Lim Tuck Sun. I will explain later in this judgment regarding Mr Lim Tuck Sun's statements and conduct in court in respect of Mr Ach's testimony; and

(iv) TMB's learned lead counsel is Mr Lambert Rasa-Ratnam (Mr Lambert).

[9] Before 27 September 2021, the following parties have closed their case at the trial:

(i) the plaintiffs;

(ii) the first and second defendants; and

(iii) TMB.

[10] The German entities had initially called witnesses to give evidence in court but due to the Covid-19 pandemic and "lockdown" in Malaysia (both total and partial), all the parties in the two suits subsequently consented to a court order for the last four remaining witnesses for the German entities (including Mr Ach) to testify online (consent order (Zoom hearing)). Annexed to the consent order (Zoom hearing) is "Annexure A", which contains all the court directions for the Zoom hearing. I reproduce below para. 12 of Annexure A to the consent order (Zoom hearing) (para. 12):

> *The Virtual Hearing shall be electronically recorded by the Host (Recording). The Recording shall be made available by the Court to Parties, Parties' counsel and Parties' Representatives as soon as practicable to enable the preparation of a transcript of the Virtual Hearing. No other recording of the Virtual Hearing, electronic or otherwise, shall be made by any of the Parties, Parties' counsel and Parties' Representatives, unless otherwise permitted by the Court.*
>
> (emphasis added)

Virtual Hearing On 27 September 2021

[11] Mr Ach was scheduled to testify at 9am German time (4pm Malaysian time), Monday, 27 September 2021, in a zoom hearing in Munich, Germany. On that day, Mr Leong could not represent the German entities. Hence, Mr Lim Tuck Sun's appearance for the German entities on 27 September 2021.

[12] Before Mr Ach entered the "witness room", Mr Lim Tuck Sun informed the court that Mr Ach's younger sister had just passed away (Mr Ach's bereavement) but Mr Ach wished to complete his evidence on 27 September 2021 so that Mr Ach could rush and take the last train from Munich to his sister's residence.

[13] Despite Mr Ach's bereavement, Mr Lim Tuck Sun had applied to have Mr Ach's testimony to be completed on 27 September 2021 because:

(i) Mr Lim Tuck Sun's clients had incurred a great deal of expense to appoint German solicitors to facilitate the zoom hearing. The German solicitors were present together with Mr Ach on 27 September 2021;

(ii) Mr Lim Tuck Sun's clients had rented a meeting room in a hotel in Munich for Mr Ach to testify online; and

(iii) Mr Lim Tuck Sun's clients and Mr Lim Tuck Sun's firm had expended a lot of time and effort to organise and prepare for Mr Ach's online evidence (Mr Lim Tuck Sun's first statement).

[14] Mr Rabindra, Mr Lim Kian Leong and Mr Lambert assured the court that they would keep their cross-examination as brief as possible (counsel's assurance).

[15] Despite Mr Lim Tuck Sun's statements and counsel's assurance, I initially intended to adjourn the zoom hearing on 27 September 2021 because Mr Ach's bereavement was a sufficient reason for such an adjournment under O. 35 r. 3 of the Rules of Court 2012.

[16] I, then, allowed Mr Ach to enter the witness room and join the Zoom hearing. After expressing my condolences for Mr Ach's bereavement, I informed Mr Ach that the court was minded to adjourn the Zoom hearing due to Mr Ach's bereavement. Mr Ach, however, pleaded with the court to proceed with his testimony. At that material time, Germany was under a partial lockdown and the last train from Munich to the residence of Mr Ach's sister was 5pm German time (12am Malaysian time). Hence, the need to complete Mr Ach's online testimony before 5pm German time (12am Malaysian time).

[17] Upon hearing Mr Ach's poignant application to complete his evidence on 27 September 2021, I proceeded with the Zoom hearing.

[18] When Mr Ach was cross-examined by Mr Lim Kian Leong:

(i) Mr Lim Kian Leong asked Mr Ach regarding the interpretation of a certain contractual provision. Mr Rabindra objected to such a question because the construction of a contract is a question of law to be submitted by parties and to be decided by the court (Mr Rabindra's

objection) – please refer to the Court of Appeal's judgment delivered by Gopal Sri Ram JCA (as he then was) in *NVJ Menon v. The Great Eastern Life Assurance Company Ltd* [2004] 3 CLJ 96, at pp. 103 to 104;

(ii) Mr Lambert supported Mr Rabindra's objection; and

(iii) I upheld Mr Rabindra's objection premised on the reason explained in the above sub-para. (1) (court's first ruling).

[19] Mr Lambert then cross-examined Mr Ach on his answers to questions no. 9 and 10 of his witness statement (Mr Ach's WS). Surprisingly, Mr Lim Tuck Sun objected to Mr Lambert's question on the following grounds (Mr Lim Tuck Sun's first objection):

(i) the German entities did not counterclaim against TMB. Nor did TMB had any counterclaim against the German entities; and

(ii) Mr Lambert's question was not relevant in the two suits.

[20] I have no hesitation to overrule Mr Lim Tuck Sun's first objection (court's second ruling) because:

(i) if Mr Lambert was not allowed by the court to challenge Mr Ach's answers to questions no. 9 and 10 of Mr Ach's WS, TMB would be deemed to have accepted the truth of such evidence - please see the Federal Court's judgment delivered by Raja Azlan Shah CJ (Malaya) (as His Majesty then was) in *Wong Swee Chin v. PP* [1980] 1 LNS 138; [1981] 1 MLJ 212, at p. 213;

(ii) Mr Lambert was entitled to cross-examine Mr Ach according to s. 146(a) of the Evidence Act 1950 (EA). Section 146 of the EA states as follows:

> **Questions lawful in cross-examination**
>
> 146. **When a witness may be cross-examined he may, in addition to the questions hereinbefore referred to, be asked any questions which tend**:
>
> (a) **to test his accuracy, veracity or credibility**;
>
> (b) to discover who he is and what is his position in life; or
>
> (c) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.
>
> (emphasis added).

It is not disputed that the cross-examination of a witness is an "acid test" for the court to decide whether the witness is truthful or otherwise. Hence, a liberal application of s. 146(a) of the EA should be adopted by the court;

(iii) whatever answer given by Mr Ach to Mr Lambert's cross-examination, Mr Lim Tuck Sun has a right to re-examine Mr Ach pursuant to s. 138(3) of the EA; and

(iv) Mr Lim Tuck Sun could subsequently submit in his written submission (after the trial) that Mr Ach's answer to the above question was not a "fact in issue" (understood in s. 3 of the EA) or was not "relevant" in the two suits (within the meaning of s. 5 read with ss. 6 to 55 EA). If the court accepts a party's submission that the evidence of a witness does not constitute a "fact in issue" or is not relevant to the case at hand, the court may simply disregard such evidence in the court's determination of the case.

[21] When Mr Ach was cross-examined by Mr Rabindra:

(i) Mr Rabindra asked Mr Ach regarding Mr Ach's answers to questions no. 3 to 5 of Mr Ach's WS regarding the restructuring of the plaintiffs at the material time;

(ii) Mr Lim Tuck Sun objected to the above questions by Mr Rabindra (Mr Lim Tuck Sun's second objection). According to Mr Lim Tuck Sun's second objection, when the plaintiffs' expert gave an expert opinion on the amount of loss which was suffered by the plaintiffs in the two suits (plaintiffs' expert), the court did not allow Mr Lim Tuck Sun to cross-examine the plaintiffs' expert on certain matters and consequentially, Mr Rabindra should also be disallowed from asking the above question;

(iii) I overrule Mr Lim Tuck Sun's second objection (court's third ruling) on the following grounds:

(a) I rely on the four grounds which I had given for the court's second ruling – please refer to the above sub-paras. 20(1) to (4); and

(b) I was unable to see how the court's earlier ruling regarding the cross-examination of the plaintiffs' expert by Lim Tuck Soon, could support Mr Lim Tuck Sun's second objection.

(iv) after I had pronounced the court's fourth ruling, Mr Lim Tuck Sun had the effrontery to state that the court's fourth ruling was "entirely irregular"! (Mr Lim Tuck Sun's second statement);

(v) when Mr Rabindra put to Mr Ach that a shareholding of 7.99% of the total issued and paid-up shares of the second plaintiff company (second plaintiff) could not be regarded as strategic, astoundingly, Mr Lim Tuck Sun raised the same objection as stated in the above sub-para. (2) (Mr Lim Tuck Sun's third objection);

(vi) Mr Rabindra stated that he had "great difficulty" in understanding Mr Lim Tuck Sun's third objection. In response to Mr Rabindra's difficulty in comprehending Mr Lim Tuck Sun's third objection, Mr Lim Tuck Sun insolently retorted, "I don't want to go to Zoo Negara and back" (Mr Lim Tuck Sun's third statement). I quickly admonished Mr Lim Tuck Sun and to his credit, an apology was tendered for Mr Lim Tuck Sun's third statement;

(vii) I had overruled Mr Lim Tuck Sun's third objection on the ground that Mr Rabindra was entitled to cross-examine Mr Ach pursuant to s. 146(a) of the EA (court's fourth ruling);

(viii) Mr Rabindra asked Mr Ach whether he was aware that approximately 57% of the total investment of US$580 million by Deutsche Telekom AG (DTAG) in the second plaintiff, had been paid to a vendor who had sold existing shares in the second plaintiff to DTAG. Mr Lim Tuck Sun objected to this question on the ground that he did not cross-examine the plaintiffs' witnesses on the same subject matter (Mr Lim Tuck Sun's fourth objection). I overrule Mr Lim Tuck Sun's fourth objection as Mr Rabindra's question was relevant concerning the issues raised by the plaintiffs in the two suits (court's fifth ruling);

(ix) when Mr Rabindra questioned Mr Ach regarding an application by the German entities to set aside the service of the writs of the two suits out of the jurisdiction of the Malaysian courts (setting aside application), Mr Lim Tuck Sun got emotional and objected on the ground that the question was "very misleading" (Mr Lim Tuck Sun's fifth objection).

I had asked Mr Lim Tuck Sun to calm down so that I could understand and record his objection. Every time there is an objection to the cross-examination of a witness, I would direct the witness to leave the witness room so that the witness is not able to listen to the objection and submission made by learned counsel. In this manner, the credibility of the witness is not affected by the objection and submission of learned counsel.

After Mr Ach had left the witness room, Mr Lim Tuck Sun's fifth objection was inexplicably withdrawn! Once again, much judicial time had been wasted by Mr Lim Tuck Sun's fifth objection and I informed him as such. I also reminded Mr Lim Tuck Sun of Mr Ach's bereavement and the need for Mr Ach to catch the last train from Munich to his sister's residence;

(x) Mr Rabindra asked Mr Ach whether he was aware that the Malaysian Court of Appeal had affirmed the High Court's dismissal of the setting aside application. Mr Lim Tuck Sun objected to this question on the

ground that the plaintiffs had applied to the High Court to set aside an arbitral award in favour of DTAG (Mr Lim Tuck Sun's sixth objection).

Mr Lim Tuck Sun went as far as to accuse Mr Rabindra of misleading Mr Ach (Mr Lim Tuck Sun's fourth statement). I need to produce below the following exchange between Mr Rabindra and Mr Lim Tuck Sun:

> [Mr Rabindra] And [Mr Lim Tuck Sun], I would really appreciate if Mr Lim Tuck Sun would stop interrupting me because it is already 9.08pm (Malaysian time).
>
> [Mr Lim Tuck Sun] **I can go this all night. (Mr Lim Tuck Sun's 5th Statement)**
>
> (emphasis added); and

(xi) Mr Lim Tuck Sun's sixth objection was later withdrawn on the ground that Mr Lim Tuck Sun would submit in his written submission regarding the striking out application.

[22] In view of Mr Lim Tuck Sun's first to sixth objections (which had unnecessarily prolonged Mr Ach's cross-examination), Mr Lim Tuck Sun's second, fifth and sixth statements, I informed Mr Lim Tuck Sun that I would consider the question of whether I should complain to the DB under s. 99(2) of the LPA regarding his conduct and statements. I have expressly asked Mr Lim Tuck Sun whether I have made myself clear to him. Mr Lim Tuck Sun answered in the affirmative.

[23] Despite Mr Lim Tuck Sun's first to sixth objections, Mr Ach managed to complete his evidence at about 2.30pm German time (9.30pm Malaysian time), 27 September 2021. Mr Ach conveyed his gratitude to the court for allowing him to complete his testimony on 27 September 2021 so as to enable him to catch the train to his sister's residence.

[24] I must commend Mr Rabindra's professional and ethical conduct notwithstanding, the provocative Mr Lim Tuck Sun's second to fifth statements and the baseless Mr Lim Tuck Sun's first to sixth objections.

Amicable Settlement Between Plaintiffs And German Entities

[25] On 19 November 2021, the plaintiffs and German entities had reached a confidential out-of-court settlement. Hence, the two suits against the German entities were discontinued without liberty to file afresh and without costs (discontinuance order (German entities)).

Court's Power To Complain To DB Regarding A&S's Conduct Of Litigation

[26] I reproduce below the relevant parts of ss. 94 and 99 of the LPA:

> **94. Power of [DB] to strike off the Roll, suspend for misconduct, etc.**
>
> (1) **All [A&S's] shall be subject for the purposes of all disciplinary actions to the control of the [DB]**.
>
> ...
>
> (3) **For the purposes of this Part, "misconduct"** means conduct or omission to act in Malaysia or elsewhere by an [A&S] in a professional capacity or otherwise which amounts to grave impropriety and includes:
>
> ...
>
> (o) **being guilty of any conduct which is unbefitting of an [A&S] or which brings or is calculated to bring the legal profession into disrepute.**
>
> ...
>
> (5) **A pupil shall *mutatis mutandis* be subject to the same control by the [DB] as is by virtue of this section exercised over an advocate and solicitor, and any reference to [A&S] in this Part shall *mutatis mutandis* include a pupil** but *in lieu* of an order striking him off the Roll or suspending him, an order may be made prohibiting the pupil from proceeding with any petition for admission until after a date to be specified in the order.
>
> (6) *For the purpose of this section, "pupil" includes a person who has completed the prescribed period of pupillage and has yet to be admitted as an [A&S].*
>
> **99. Complaint against [A&S] or pupil**
>
> (1) **Any complaint concerning the conduct of any [A&S]** or of any pupil shall be in writing and **shall in the first place be made or referred to the [DB] which shall deal with such complaint in accordance with such rules as may from time to time be made under the provisions of this Part**.
>
> (2) **Any court** including the Industrial Court and a Syariah Court, Judge, Sessions Court Judge or Magistrate or the Attorney General **may at any time refer to the [DB] any complaint against an [A&S]** or a pupil.
>
> (emphasis added)

[27] It is not disputed that by reason of s. 99(2) of the LPA, the court has a discretion to complain to DB regarding the conduct of a case by an A&S before that court.

[28] On 27 September 2021, in view of Mr Ach's bereavement, Mr Lim Tuck Sun's first statement and counsel's assurance, Mr Lim Tuck Sun knew as a fact that Mr Ach had to complete his evidence on that day so as to enable Mr Ach to catch the last train from Munich to the residence of Mr Ach's sister. Yet, Mr Lim Tuck Sun's first to sixth objections had unnecessarily prolonged Mr Ach's cross-examination. Worse still, Mr Lim Tuck Sun's second, fourth and fifth statements gave rise to the following questions of whether Mr Lim Tuck Sun was guilty of the following misconduct which:

(a) is "unbefitting" of an A&S; and/or

(b) "brings or is calculated to bring the legal profession into disrepute"

within the meaning of s. 94(3)(o) of the LPA.

[29] After much consideration, I have decided not to lodge a complaint to DB regarding Mr Lim Tuck Sun's statements and conduct on 27 September 2021 (court's decision not to complain against Mr Lim Tuck Sun). My reasons are as follows:

(i) all learned counsel, including Mr Lim Tuck Sun, had represented their clients in the trial until 9.30pm (Malaysian time) on 27 September 2021. Hence, it was understandable that tempers frayed on that day;

(ii) the two suits have been highly contentious from the commencement of the trial. Learned counsel could have been carried away in the heat of battle on 27 September 2021; and

(iii) the dispute between the plaintiffs and German entities has been finally resolved by way of the discontinuance order (German entities). There is no public interest for a complaint to be made by this court to the DB with regard to Mr Lim Tuck Sun's statements and conduct on 27 September 2021.

Doctored Video Clip

[30] The plaintiffs' solicitor sent an email dated 21 January 2022 to the court interpreter (plaintiffs' email) which stated as follows, among others:

(ii) the court was informed about the video clip; and

(ii) all the parties' learned counsel, including Mr Lim Tuck Sun, would wish to meet me (without the presence of their clients) on an urgent basis regarding the video clip.

[31] The video clip showed, among others:

(i) four "frames" of Mr Rabindra, Mr Ach, Mr Lim Kian Leong and me (four frames);

(ii) in view of Mr Ach's bereavement, I had asked Mr Lim Kian Leong in a loud voice, among others, not to ask questions on contractual interpretation;

(iii) I had asked Mr Lim Kian Leong whether I had made myself clear and Mr Lim Kian Leong answered in the affirmative; and

(iv) I had asked the court interpreter to record the time of the above matter so that I could complain to DB against Mr Lim Kian Leong.

[32] The video clip was doctored as follows:

(i) regarding the contents of the video clip, the court's Zoom record and notes of proceedings on 27 September 2021 (which had been agreed by all parties) stated that I had asked Mr Lim Tuck Sun (not Mr Lim Kian Leong) whether Mr Lim Tuck Sun had understood my question (not to delay Mr Ach's evidence in view of Mr Ach's Bereavement) and Mr Lim Tuck Sun (not Mr Lim Kian Leong) answered "You have."; and

(ii) in addition to the four frames, the court's Zoom record would also have the frames of Mr Lim Tuck Sun, Mr Lambert, certain parties and parties' representatives (the camera recording of parties and parties' representatives were switched off upon the court's direction). Mr Lim Tuck Sun's frame was deliberately omitted from the video clip.

Consequences Of Doctored Video Clip

Contempt Of Court

[33] Firstly, the making of the video clip by any person [maker (video clip)] had breached para. 12 (first contempt of court).

[34] Any person who had abetted or assisted in the commission of the first contempt of court may be liable for contempt of court (second contempt of court) – please refer to the Federal Court's judgment delivered by Lee Hun Hoe CJ (Borneo) in *TO Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 LNS 126; [1977] 1 MLJ 151, at p. 154.

[35] In *R v. Gray* [1900] 2 QB 36, at p. 40, Lord Russell of Killowen CJ in the English Divisional Court has explained a specie of contempt of court known as "scandalising the court". According to Lord Russell of Killowen CJ in Gray, at p. 40:

> **Any act done** or writing published **calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt**.
>
> (emphasis added)

[36] The above meaning of scandalising the court as stated in Gray has been adopted by our Malaysian court, *eg*, the 6-1 majority judgment of the Federal Court delivered by Rohana Yusuf PCA in *Peguam Negara Malaysia v. Mkini Dotcom Sdn Bhd & Anor* [2021] 3 CLJ 603; [2021] 2 MLJ 652, at p. 15.

[37] The making and transmission of the doctored video clip amount to an act which scandalised this court due to the following reasons:

(i) without knowledge of:

(a) Mr Ach's bereavement;

(b) Mr Lim Tuck Sun's first statement;

(c) counsel's assurance;

(d) Mr Rabindra's objection and the court's first ruling;

(e) Mr Lim Tuck Sun's first objection and the court's second ruling;

(f) Mr Lim Tuck Sun's second objection, the court's third ruling and Mr Lim Tuck Sun's second statement;

(g) Mr Lim Tuck Sun's third objection and the court's fourth ruling;

(h) Mr Lim Tuck Sun's fourth objection and the court's fifth ruling;

(i) Mr Lim Tuck Sun's sixth and seventh objections as well as their subsequent withdrawal;

(j) Mr Lim Tuck Sun's fourth and fifth statements;

(k) the court's express notice to Mr Lim Tuck Sun that the court would consider lodging a complaint against Mr Lim Tuck Sun regarding his statements and conduct in court;

(l) the discontinuance order (German entities); and

(m) the court's decision not to complain against Mr Lim Tuck Sun

- any reasonable person who has only watched the doctored video clip would form the view, opinion and/or belief that the court had unjustly dealt with Mr Lim Kian Leong by complaining to DB about him merely because he had asked Mr Ach regarding the interpretation of a contractual provision; and

(ii) as explained in the above sub-para. (i), making and transmission of the doctored video clip was "calculated to bring a court or a judge of the court into contempt, or to lower his authority", as explained in gray (third contempt of court).

Offences Under CMA

[38] I reproduce below the definitions of "applications service", "communications" and "content" (in s. 6 of the CMA) as well as s. 233 of the CMA:

6. Interpretation

...

"applications service" means a service provided by means of, but not solely by means of, one or more network services;

...

"communications" means any communication, whether between persons and persons, things and things, **or persons and things, in the form of sound**, data, text, **visual images, signals or any other form or any combination of those forms**;

"content" means any sound, text, **still picture, moving picture or other audio-visual representation**, tactile representation **or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically**;

233. **Improper use of** network facilities or **network service**, *etc*.

(1) **A person who**:

(a) **by means of any** network facilities or network service or **applications service knowingly**:

(i) **makes, creates** or solicits; and

(ii) **initiates the transmission of**,

any comment, request, suggestion or **other communication which is** obscene, indecent, **false**, menacing or offensive in character **with intent to annoy**, abuse, threaten or harass **another person**; or

(b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address, commits an offence.

...

(3) *A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.*

(emphasis added)

[39] The making of the doctored video clip constitutes an offence under s. 233(1)(a)(i) of the CMA (first CMA offence) for the following reasons:

(i) the contents of the video clip fall within the wide definition of "content" in s. 6 of the CMA;

(ii) the transmission of the video clip constitutes a "communication" in s. 233(1)(a) of the CMA as understood in the definition of "communications" in s. 6 CMA;

(iii) the transmission of the video clip through "WhatsApp" or any other electronic means, constitutes a "communication" of the video clip through an "applications service" as defined in s. 6 of the CMA;

(iv) as explained in the above sub-para. 37(1), the contents of the video clip are false; and

(v) the making of the false video clip could only have been made with the intention to annoy Mr Lim Kian Leong and/or me because of the reasons expressed in the above sub-para. 37(1).

[40] Any person who knowingly transmits the false video clip [transmitter (video clip)], commits an offence under s. 233(1)(a)(ii) of the CMA (second CMA offence).

[41] The punishment for the first and second CMA offences is provided in s. 233(3) of the CMA.

Remedies Available To Mr Lim Kian Leong

[42] Section 499 of the PC provides as follows:

> **Defamation**
>
> **Whoever**, by words either spoken or intended to be read or by signs, or **by visible representations, makes** or publishes **any imputation concerning any person**, intending to harm, or **knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person**.
>
> (emphasis added)

[43] The doctored video clip has defamed Mr Lim Kian Leong by "visible representations" which was made and/or transmitted with the knowledge or reason to believe that the imputation concerning Mr Lim Kian Leong in the video clip would harm Mr Lim Kian Leong's reputation. An offence of criminal defamation is punishable under s. 500 of the PC with imprisonment up to two years and/or with a fine.

[44] Mr Lim Kian Leong has the right to file a civil suit for defamation against the maker (video clip) and/or transmitter (video clip).

Possible Sanctions By DB

[45] By virtue of s. 94(5) and (6) of the LPA, all pupils are subject to DB's control with regard to disciplinary matters.

[46] If any A&S and/or pupil are involved in the making and transmission of the doctored video clip, the A&S and/or pupil may have committed two misconducts as provided in s. 94(3)(o) of the LPA. In such circumstances, the A&S and/or pupil in question is liable to disciplinary sanction by the DB.

Court's Response To Doctored Video Clip

[47] Despite the plaintiffs' email which requested for all learned counsel to meet me without their clients, I had directed the court interpreter to fix a case management of the two suits on 25 January 2022 (as proposed by learned counsel) and the "zoom link" was given to all learned counsel, parties and parties' representatives. This is because, as explained by Lord Atkin in a Privy Council's judgment in *Ambard v. AG for Trinidad & Tobago* [1936] 1 All ER 704, at p. 709 (an appeal from Trinidad and Tobago), justice is not a cloistered virtue.

[48] Despite the discontinuance order (German entities), Mr Lim Tuck Sun appeared in court on 25 January 2022.

[49] On 25 January 2022:

(i) all learned counsel informed the court that they had inquired from their learned juniors and pupils (involved in the trial) regarding the making and transmission of the video clip. All learned counsel then confirmed that the A&S's and pupils in their firms were not involved in the making and transmission of the video clip;

(ii) Mr Lambert apologised to the court for the "embarrassment" caused to the court by the video clip. I quickly interjected and informed Mr Lambert that no apology was needed or required from him. Nor was any apology needed or required from all other learned counsel; and

(iii) I informed all learned counsel, among others:

(a) I was not and would not be influenced in any manner by the contents of the video clip or any other extraneous matter;

(b) this court would decide the two suits based purely on the evidence adduced at trial and the applicable law; and

(c) regarding Mr Rabindra's first objection and the court's first ruling, I apologised to Mr Lim Kian Leong for speaking to him in an offensive manner. Mr Lim Kian Leong magnanimously replied that no apology was needed.

Epilogue

[50] This judgment puts on record what has actually transpired regarding Mr Ach's testimony, in particular the involvement of Mr Lim Kian Leong and Mr Lim Tuck Sun.